THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.324 OF 2002

Dated: 28.01.2006

BETWEEN

M/s.Vani Marine Ice Factory

….PETITIONER

AND

Visakhapatnam Port Trust, Visakhapatnam-530035, rep. by its Chief Mechanical Engineeer

….RESPONDENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.324 OF 2002

ORDER:

The petitioner is a proprietary concern having ice factory in fishing harbour within Visakhapatnam Port Trust (hereafter called, Port Trust) area. The Port Trust agreed to supply electricity to the petitioner. It is the case of the petitioner that on 24.03.2001, the electrical meter in petitioner's premises was removed and a new electric meter was installed, through which, power is being supplied. It is alleged that in spite of the same, the Visakhapatnam Port Trust, the sole respondent herein, issued proceedings, dated 14.12.2001, directing the petitioner to pay a sum of Rs.9,81,260/- (Rupees nine lakh eighty one thousand two hundred and sixty only) by way of back billing within a period of thirty days and also clear all the dues at the earliest. Aggrieved by the same, the present writ petition is filed.

The petitioner contends that the respondent placed reliance on clause 22.3.3.3 of Conditions of Supply by A.P.Transmission Corporation (AP TRANSCO) for the purpose of back billing which has no application to Port Trust. It is also urged by the petitioner that when there is a defective meter as per Section 26(6) of the Indian Electricity Act, 1910, it is only the Electrical Inspector, who is competent to decide as to whether the meter is defective or not, and Port Trust has no jurisdiction.

A counter affidavit is filed opposing the writ petition. It is, *inter alia,* stated that the supply of electricity by the respondent is governed by the contract and therefore in the realm of contract, a writ petition would not lie. It is also stated that on 15.03.2001, the Executive Engineer (Electrical) of Port Trust issued a notice to the petitioner to replace the defective meter and the same was not done. Therefore, the procedure for back billing as per clause 22.3.3.3 of AP TRANSCO tariff terms and conditions, which is a rationale method, was available. It is also stated that the petitioner did not comply with the condition imposed by this Court while passing interim orders.

This Court while admitting the writ petition on 04.01.2002 passed interim orders in W.P.M.P.No.364 of 2002 staying disconnection on condition of the petitioner depositing one-third of the demanded amount within eight weeks therefrom. The respondent in its counter affidavit averred that the petitioner failed to comply with the condition imposed by this Court. The same is not denied. It is now well settled that if

any person aggrieved fails to comply with the conditions imposed by the Court while passing interim orders, in its discretion, the Court can deny relief to the petitioner. On this ground alone, the writ petition is liable to be dismissed.

As rightly contended by the learned counsel for the respondent, the dispute between the petitioner and the respondent arises in the realm of contract. The petitioner set up an ice factory in fishing harbour area of Port Trust. As per conditions of allotment of land, Port Trust agreed to supply electricity to the petitioner. It is a bulk consumer of electricity from AP TRANSCO and therefore, it has no independent tariff conditions and necessarily it has to follow some rationale method when the meter fixed to the petitioner's premises is defective. There is a force in the submission made by the learned counsel for Port Trust. Be that as it is, as the entire transaction is governed by the contract between the petitioner and the respondent, a writ petition would not lie. Further, the petitioner did not comply with the condition imposed by this Court while passing interim orders. Therefore, this Court is not inclined to exercise discretion in favour of the petitioner.

The writ petition, for the reasons as above, is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

28.01.2006

VGB